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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/627,155	07/27/2000	John Tauber	P7240.0001/P076	9856

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 08/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/627,155

Applicant(s)

TAUBER, JOHN

Examiner

Robin A. Hylton

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 22 is/are rejected.
- 7) ☒ Claim(s) 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3727

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-3,6,8-13,15, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Ostrowsky (US 3,853,236).

Ostrowsky teaches the claimed closure having radially disposed lugs on an outer cap (figs. 2,4, and 5) and recesses on an inner cap, said recesses each formed by a vertical wall and an inclined wall. The lugs of the outer cap engage the recesses of the inner cap in a closure application direction and slide up the inclined walls in a closure opening direction when a force urging the outer cap towards the inner cap is not being applied. See column 2, lines 52-64 regarding the inclination of the recess walls (40,38 and the lower portion of 34).

3. Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Maki (US 3,622,027).

The lugs are formed by knurls **34** and the recesses are formed by knurls **24**. The lugs are formed at an intersection of the second top wall and the second cylindrical wall and are radially disposed about the second top wall.

Claim Rejections - 35 USC § 103

4. Claims 4,5 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowsky.

Ostrowsky discloses the claimed invention except for the lugs and recesses numbering at least twelve and/or the lugs and recesses numbering twenty-four.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide at least twelve and more specifically twenty-four lugs and

Art Unit: 3727

recesses, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

5. Claims 7 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowsky in view of Friedenthal (US 5,147,053).

Ostrowsky teaches the claimed closure except for the first top cap containing a beveled edge.

Friedenthal teaches a closure having a beveled edge.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a beveled edge as taught by Friedenthal to the first top cap of Ostrowsky. Doing so would provide a cap edge which would allow for more comfortable actuation of the first cap toward the second cap.

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowsky in view of Buono (US 5,197,616).

Ostrowsky teaches the claimed closure except for indicia on an outer surface of the first top wall.

Buono teaches a closure having indicia on an outer surface of the first top wall.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply indicia on an outer surface of the first top wall as taught by Buono to the closure of Ostrowsky. Doing so would provide operating instructions for the user of the closure.

Allowable Subject Matter

7. Claim 21 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments filed June 26, 2002 have been fully considered but they are not persuasive.

Regarding applicant's remarks with regard to Ostrowsky, the drawings cannot be relied upon to determine what "differences" exist between the disclosure of the patent and the claims of the instant application. At column 2, lines 52-64, it is disclosed that the recess is bounded by two inclined walls -- wall **34** inclined approximately 85° from the horizontal and wall **40** inclined approximately 80° from the horizontal. Thus, an inclined portion of the recess (bounded by walls 40,38 and the lower portion of 34) engages the lug in the closure opening direction. Further, the lugs of the outer cap are not engaged by the recesses of the inner cap in a closure opening direction unless a downward force is applied to the outer cap.

Regarding the remarks of the separator between the upper and lower caps of Ostrowsky, applicant is reminded of the use of "open" phrases such as "comprising" in the preambles of claims. The claims of the instant application do not preclude the use of a separator between the inner and outer caps which is overcome by a downwardly applied force. The instant claims only require that a downward force needs to be applied to the caps in order to remove the inner cap from the bottleneck. Any additional flexibility requirements of the prior art closure is not at issue, particularly since the structure of the prior art closure functions in the same manner as that claimed in the instant application, i.e., a downward force is required to overcome the spring bias and allow the two closure caps to rotate simultaneously in the closure removing direction.

In response to applicant's argument that the reference to Maki fails to show certain features of applicant's invention, it is noted that the feature upon which applicant relies (i.e., the recesses each have an inclined surface with respect to the horizontal wall) is not recited in the

Art Unit: 3727

rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

11. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

Art Unit: 3727

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____



12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 10:00 a.m. to 5:30 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

Robin A. Hylton/rah
Patent Examiner
GAU 3727


Stephen P. Garbe
Primary Examiner

August 2, 2002